



Purpose: For Decision

## Committee report

Committee	<b>CABINET</b>
Date	<b>TUESDAY, 13 DECEMBER 2011</b>
Title	<b>THE DEVELOPMENT OF FUTURE OPTIONS FOR SOCIAL CARE SERVICES CURRENTLY PROVIDED BY THE COUNCIL</b>
Report of	<b>CABINET MEMBER FOR CHILDREN'S SERVICES AND EDUCATION AND THE CABINET MEMBER FOR ADULT SOCIAL CARE, HOUSING AND COMMUNITY SAFETY</b>

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### EXECUTIVE SUMMARY

1. That Cabinet is asked to give direction in determining the future of social care services provided directly by the Community Wellbeing and Social Care Directorate, including for example, Wightcare, Beaulieu House in Newport, The Adelaide in Ryde and The Gouldings in Freshwater.
2. That Cabinet is recommended to invest in the development of a business case that will set out and evaluate detailed options for the future of all directly provided social care services. These detailed options can then be considered at a later date by Cabinet.
3. That future proposals will ensure that people with social care needs and their carers, including the parents and carers of children with disabilities, will have choice and control over services they need, with access to a sustainable and competitive market that provides a range of routine, critical and specialist care services to Island residents.

### BACKGROUND

4. Cabinet are asked to consider investing in the development of a business case for the future of directly provided social care services. Many of these services operate today in specialist markets, very often providing for higher priority needs such as rehabilitation for vulnerable people recovering from illness or respite care for the carers of severely disabled children and young people. They also provide social care and support services that are not all currently provided locally by independent providers.

5. While not a statutory duty to directly provide these services, the council has a responsibility to ensure that such services are available. At present, the council directly provides services worth a gross £6.3m out of a total service provision spend of £50.3m per year i.e. 12.5%. Included in this gross cost is the employment of 323 people who deliver these services.
6. The services referred to as social care services provided directly by the council include:
  - a) Resource centres at The Adelaide and The Gouldings (short-term residential respite stays and day care for older people);
  - b) Westminster House (short-term residential respite stays and day care for adults with a learning difficulty);
  - c) Beaulieu House (short-term residential respite stays and day care for young people with complex needs);
  - d) Homecare service which supports young people with complex needs in the community
  - e) A homecare re-ablement service (short-term community-based homecare which supports adults to maximise their independence and minimise the need for ongoing homecare support);
  - f) Mental health day services (community-based service supporting people with mental health needs to maximise their independence and support their continuing recovery);
  - g) No Barriers service (which assists adults with a learning difficulty to access vocational training and supported employment);
  - h) Wightcare Services (community-based 24/7 telephone lifeline, Control Centre and Mobile Warden Response Service).
7. Local authority direct services have in the past been slow to adapt to changing market places, with constraints on their ability to be competitive in the market-place. These constraints include the need for compliance with procurement requirements, the implications of employee terms and conditions on proposals for change, the cost of back-office support services and the use and interpretation of legal powers.
8. There is growing evidence from other local authorities including Wokingham, Essex, Blackburn, and Swindon, where services have been transferred into trading enterprises, that these constraints can then be better managed to the benefit of service users, staff and the council.

## STRATEGIC CONTEXT

9. The council's strategic priorities as set out in the Corporate Plan 2011-2013 include a commitment to supporting older and vulnerable residents and a commitment to deliver budget savings through changes to the way the council works. Investing in a business planning process will seek to ensure that vital social care services are available on the Island in the future, while supporting the council's change into a commissioning-led organisation.
10. There are strategic challenges that require a plan for directly provided care services:
11. Becoming a commissioning-led council  
Isle of Wight Council is changing the way it operates and works with the Island's residents. Cabinet set out a number of principles for the future in December 2010, including a commitment to becoming a commissioning-led organisation that focuses on delivering core responsibilities while operating fewer directly provided services. This reflects the aspirations of the White Paper, *Open Public Services (2011)*, and the *Localism Act 2011*, which emphasise the role of commissioning, local choice and a much reduced role for directly provided services in people's lives.

12. Economic pressures

The public sector faces sustained economic pressures and demographic changes, such as an ageing population, that result in steady increases in demand for important services. The council needs competitive and sustainable market-places that can respond to social care needs with services that provide value for money.

13. Personal budgets

The council is increasingly providing residents with the means to exercise choice and control over their social care services and support, by giving personal budgets to people eligible for help with social care. This approach is also offered to the parents and carers of children with disabilities. Approximately 62.05%, against the local self directed support indicator, of all adults and their carers receiving council support now have a personal budget, anticipated to increase to 100% by 2013. It will be the case that service users, carers and parents with personal budgets will increasingly become the commissioners of their own services, purchasing the largest share of the social care market.

14. Market change

The change in commissioning from large scale contracting by the public sector to the purchase of services by individuals represents a potential threat to the sustainability of services delivered by provider organisations of all types. The market has in the past been funded directly by the public sector. This represents a threat to the stability of the market as it adjusts to a more individualised retail approach to providing services in which those that offer what individuals need and are prepared to pay for, will be those that succeed.

15. Ensuring the availability of services, standards and choice

During the next two or three years of market change, the council will need to ensure that Island residents continue to have access to choice, capacity and critical services of a good standard. There is a particular need to ensure the availability of any specialist services and those services considered of last resort that are currently provided directly by the council. Despite interest in such provision by alternative providers, these services are often not currently available in the wider local market.

16. The challenge to direct services

As a result of the increasing ability for individuals to make personal choices, and where there is current or future competition, people may choose not to use council-run services, perhaps on the basis of cost or location. A reduction in usage would increase the cost of delivering these services. In the increasingly challenging financial position the council will be in, the council would therefore have to shut down a number of popular and vital services. While some services such as Wightcare generate a financial surplus, others are not able to do so and will be at risk. This could result in a reduction in the variety and capacity of services on offer to vulnerable Island residents where there are no alternative services.

THE FUTURE OF DIRECTLY PROVIDED SOCIAL CARE SERVICES

17. It is proposed that all directly provided social care services set out in paragraph 6 above are subject to a business planning process that will lead to options for their future. While different options may be required for different services, with Westminster House being the specialist service furthest along what may be a path to a sustainable future.

18. The managers, staff and service users at Westminster House, the council-run respite care service for people with learning disabilities, have been working together on future business planning. An initial range of proposals and actions identified so far, with the aim of increasing the future sustainability of the service, will develop services and reduce costs. A new

business plan includes new income and savings, leading to projected savings of £300,000 in annual costs. This includes for example mobilising community support, involving service users and their families in identifying new business opportunities, and revised staffing arrangements that will contribute £192,000 to reducing operating costs. The process has also led to the active support and involvement of community groups, and improvements to the service offered.

19. The Wightcare service currently generates income for the council by offering a community alarm and mobile warden service directly to approximately 2500 vulnerable Island residents. The market place in which Wightcare operates is changing. The Island has a rapidly growing elderly population with expectations of independent living, this is placing significant strain on the Wightcare service which was not designed to cater for the level of demand it now faces, however it generates significant growth opportunities for this particular service area.
20. Until now the council has been reluctant to invest in modernising the Wightcare service. Indicative business planning demonstrates that the service may no longer be able to operate without the benefits of freedom to trade and operate freely in the wider market. Work to address this in the interim through operational and financial planning is already underway, to be implemented at the end of this financial year.
21. The managers of these specialist services recognise that in order to flourish and secure investment that will enable them to develop potential opportunities within changing social care markets, they may need access to commercial opportunities and partners, and the ability to reduce operating costs. These are freedoms and actions that are on the whole beyond the remit or control of directly provided council services.
22. It is proposed that the Council adopt a strategic business development model as set out in Appendix 1. This is a five stage process. It is proposed that the council commence the first stage, the development of a business case leading to a number of options that will be subject to analysis, consultation and detailed consideration of feasibility.
23. The critical factors requiring assessment and development at stage 1 of the process are set out in Appendix 2. In summary, they are:
  - a) Clarification of objectives
  - b) A market appraisal
  - c) Assessment of regulation and legal factors
  - d) Comparative analysis of needs and costs
  - e) Initial consultation
  - f) Initial assessment of the impact of potential options
  - g) The development of options
  - h) Option evaluation criteria
24. Such a feasibility study would lead to stage 2, requiring consultation and consideration of the submitted options, leading to decision on future actions by Cabinet in summer 2012.
25. If required, stages 3 and 4 of the proposed process would include implementation of decisions. This may conclude with a final delegated decision to proceed in early 2013, depending on the range of business options being implemented.
26. The first stages of this approach, and subsequent stages should they be required, would be based on a managed project that draws on expert skills and knowledge. Council staff would contribute internally provided information, planning, analysis and consultation. It is also proposed that a successful project would require expert business and legal advice by

advisers with a proven track record in implementing plans for change in directly provided social care services.

27. Depending on the choice of options, this process could result in the implementation of selected options from January 2013.

## CONSULTATION

28. Between October 2010 and January 2011 the council consulted on proposals for the respite care service provided from Westminster House to be relocated. A detailed report on the results of that consultation was published ([click here for link to document](#)).
29. There was strong support for not relocating the service, including comment in the Mencap response (arising from consultation with 90 people) that, *“none of the attendees at the two consultation meetings held by John’s Club, Isle of Wight Mencap and Mencap, nor those individuals and families that have contacted us, have wanted Westminster House services to relocate”*.
30. The majority of those expressing a view wanted to maintain the respite service at Westminster House , feeling that there should “be a way” of achieving this. This included several suggestions in favour of not for profit enterprise or a partnership approach that would give more time for the service to become a social enterprise in the existing buildings.
31. A consultation exercise from July 2011 to September 2011 focussed on care for older people and specifically the role of The Adelaide and The Gouldings. This process elicited 237 individual survey responses, 15 written responses and 35 people responding through 4 discussion groups led by either the LINK or Older Voices. There was also a written response representing the views of 60 staff and the League of Friends of the Gouldings, service users, their families and community representatives. 21 people attended three public events at different Island locations.
32. There was strong support and appreciation for the impact of the residential respite and day care services provided at The Gouldings and The Adelaide from users of the service and carers. These are the people most affected by any proposed changes that may emerge from the development of future options. There was also strong support for developing the range of services provided from these centres and for making them accessible for people wishing to purchase directly from their own resources without the need for assessment by adult social care. This was particularly expressed in relation to residential respite and day care services.
33. Of those who expressed a view, there were a significant number of responses suggesting that the future of these services should rest in some form of “not for profit” arrangement where the focus was on quality services meeting the community’s needs albeit delivered at competitive prices.
34. These views were also outlined in a detailed response written by the current manager of The Gouldings, in consultation with employees (the Gouldings Action Group), the Gouldings League of Friends and service users, their families, carers and community representations.
35. This response identified the opportunity to manage services at arms length from the council, and ultimately completely independently. However, it also recognised the need to prepare thoroughly to be able to ensure that the any new enterprise could develop the necessary skills and insight to be competitive and sustainable in the longer term.
36. A report of the consultation findings has been published ([click here for the document](#)).

37. Any business case for the future provision of directly provided care services would require further informed consultation on the most viable options with service users, carers, parents and carers of children with disabilities, employees and their representatives.

### CARBON EMISSIONS

38. Any business planning process will recognise that The Council's Carbon Management Plan requires the carbon emissions from current or formerly directly provided services to be included in the council's future carbon footprint.

### EQUALITY AND DIVERSITY

39. A full Equalities Impact Assessment (EIA) will be required as part of a project plan leading to options for the future of directly provided social care services, requiring a range of assessments where different options and proposals may need to be considered for different services. This is particularly important in view of the impact on many vulnerable people, carers, children with disabilities and the workforce (which is at present 90% comprised of women, many of whom are part-time).

### PROPERTY IMPLICATIONS

40. The implications of options for the future developed within the business case would require an assessment of property related issues and implications would need to be considered, as all directly provided social care services are currently users of council properties.
41. If a decision is taken to outsource such care or to set up trading enterprises, it is important that the transfer of any Council property assets (whether freehold or leasehold) is undertaken at market value/rent, and not on any property subsidised basis. If a subsidy was to be offered the business (in whichever form) would not actually be competing (or competing fairly) in the open market and would, in effect, still be partly funded by the Council (which could raise issues of state aid, or challenges for unfair practice).

### OPTIONS

42. Option 1) Take no action.
43. Option 2) Develop and consult on a business case for closing directly provided social care services.
44. Option 3) Develop and consult on a business case for outsourcing directly provided social care services.
45. Option 4) Develop and consult on a business case for transferring directly provided social care services into new trading enterprises such as independent not-for profit enterprises or a Local Authority Trading Company.

### FINANCIAL / BUDGET IMPLICATIONS

46. The development of a business case will require investment in the form of extra project management capacity to manage a number of activities.
47. This will include the need for expert advice based on successful experience of delivering similar projects. The Council will also be required to invest in project management that will

undertake a scoping and feasibility plan that takes into account risk and impact assessments, consultation and the development of a project business case.

48. It is proposed this will be achieved through a mixture of internal redeployment of existing staff and the use of external expertise.
49. With regard to option 3; assuming that there was sufficient interest to take over the services, then outsourcing has the potential to achieve savings for the council. In effect the private sector may be able to deliver the services and facilities at a cost lower than the existing in-house service. A feasibility study which explores the options is a prerequisite to arriving at the right decision as the Council's directly provided care services are often providing services for which there are at present no alternative providers, rendering estimates of potential savings will be an important element of any proposed future recommendations. There would be extra cost in the short term of specifying, tendering and awarding any such contract to run the facilities, but it would only be incurred on a one-off basis as part of the set-up costs of such an arrangement and would be offset by longer term savings
50. With regard to option 4 – to pursue a social enterprise model or Local Authority Trading Company, is also dependent on the outcome of an initial feasibility study and business case. If pursued, it would require further investment in options development planning and implementation. Similar to option 3, such costs would be one-off costs and part of an invest to save initiative to deliver ongoing savings for the Council.
51. A business case that investigates and develops options for the future is required. This is best undertaken by experienced external advisers with a track record of delivering similar evaluations and enhancing in-house skills and expertise. In order to minimise the cost of such a study, in-house employee resource will be re-deployed to this project. The in-house support will involve legal, procurement, financial, property and human resource matters, as well as dedicated project management staff.
52. Resource within the Finance function has already been identified and it will be necessary for other internal resources to be identified to minimise the external cost. The cost of the required feasibility study is estimated to be up to £30,000, with an in-house cost of £13,000 (the equivalent of 2 staff working 50% of their time for 3 months on the study plus minor overhead expenses). This cost will be met from within the Council's revenue budgets in 2011-12.
53. In the event of the project continuing beyond the initial feasibility stage, the additional costs of developing the selected options – outsourcing or a new enterprise – would require continued investment in expert advice, the cost of which will be determined by the options selected. As a preliminary indication only, the further cost could be in the region of £100,000, although again this could be minimised by support from in house staff resource. A project budget will have to be established for such a purpose from general fund balances as part of an invest to save initiative to deliver ongoing savings for the Council.

## LEGAL IMPLICATIONS

54. Section 111 Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure of money) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
55. Outsourcing is a form of contracting and therefore any outsourcing must be carried out in accordance with the council's contract standing orders (and its procurement code). Although the value of a contract covering the outsourced services would exceed the EU threshold for

services (currently £156,442), the nature of the services to be outsourced are Part B services as set out in Schedule 3 of the Public Contract Regulations 2006 (Regulations). Contracts for the provision of Part B services are not subject to the full requirements of the Regulations; nevertheless, when letting a contract for a Part B service, the council must still comply with the principles of equal treatment, non discrimination and acting in a transparent way as set out in the relevant EU Directive.

56. Section 2 Local Government Act 2000 gives a local authority the power to do anything which it considers is likely to achieve objectives which include the promotion or improvement of the economic and/or social wellbeing of its area. This power can be exercised in relation to, or for the benefit of, the whole or any part of the local authority or all or any persons resident or present in the local authority's area.
57. The council has the power to support the establishment of a not-for-profit organisation (which may include a social enterprise, a company limited by guarantee, a community interest company or a mutual), to deliver social care services provided that the nature and the extent of that support does not contravene any state aid regulations and result in the council providing illegal state aid.
58. Sections 95-96 Local Government Act 2003 (as amended by regulations in 2009), give the council a power to set up a LATC. A LATC is a private limited company, limited by shares. All the shares in the LATC would be, and must be, owned by the council and the LATC has the ability to trade on a commercial basis (with the intention that it has no subsidy or support from the parent council), by offering its services to other social care businesses. Any profit made by the LATC could be either reinvested into the LATC to develop and improve the services it offers. Before a LATC can be established a business case must be prepared for approval by the council and must demonstrate that the LATC would be financially viable. The LATC cannot be progressed in the absence of the business case.

## RISK MANAGEMENT

59. Investing in a business case that would clarify the feasibility and likely costs and outcomes of changes to directly provided social care services is intended to ensure that future decisions are fully informed.
60. The risks that may arise should such a process be undertaken include:
  - 1) A lack of capacity to undertake an adequately robust investigation, leading to a poorly informed business case and inadequate information on which future decisions can be taken.
  - 2) Delay in making changes vital to the development of the social care market.
  - 3) Delay in identifying and developing the sustainability or otherwise of directly provided services, leading to failure, increased or unquantifiable costs. This could also place vulnerable service users at considerable risk.
  - 4) Directly provided services may not be able to take advantage of a social care market in which commissioning will be undertaken on the whole by personal budget holders.
61. Failure to invest in this process may result in a number of possible consequences including:
  - 1) A decision-making process that is not adequately informed, leading to increased cost to the council and failure to ensure that the market provides adequate choice, capacity or standards. This may place the vulnerable service users, carers, parents and children with disabilities at considerable risk of insufficient or no service



- 2) Failure to adequately manage the impact of change in choice, cost, capacity and standards on council staff and the vulnerable people most at risk of the consequences of change, which in turn could place the council at risk of legal challenge.
- 3) Delay in decision making, with impact on the Council's move to a commissioning led organisation.
- 4) Failure to attract market interest.
- 5) An increased risk of business and service failure following the implementation of a future plan for directly provided services.

## EVALUATION

62. To ensure that investment in the business case development process is efficiently focussed on the most likely current options, the Cabinet is asked to give direction on which option or options discussed in this paper should be subject to the first stage feasibility and planning process.
63. Option 1. Take no action, and Option 2. Investigate and consult on the business case for closing directly provided social care services.  
These options fail to address the challenges set out in the 'Strategic Context' section of this report and are not put forward for consideration.
64. Option 3. Develop and consult on a business case for outsourcing directly provided social care services.  
Outsourcing of services would require the Council to commission the currently provided services from the wider social care market. Depending on the service and location of services
65. An investigation of the business case and the development of options for outsourcing of directly provided services would be required as part of a more extensive business development project for all of the council's directly provided services. It may be the case that different approaches to the future will be required by different services as a result for example of assessments of the ability of markets to deliver services at viable cost. Appendix 2 indicates the issues that would need to be considered.
66. Option 4. Develop and consult on a business case for transferring directly provided social care services into new trading enterprises such as independent not-for profit enterprises or a Local Authority Trading Company.  
Transfer into the social enterprise sector or to a Local Authority Trading Company (LATC) would have the intention of enabling the transferred service to operate with commercial freedoms and to develop the business acumen needed to become financially sustainable.
67. The approaches to transfer out of local authority control most commonly used by councils are transfer of services into a mutually owned not-for-profit social enterprise or a council-owned LATC.
68. A not-for-profit social enterprise is an independent trading organisation not under the control or ownership of the council. The government supports the creation of mutually owned enterprises as an alternative to direct public service provision. Ownership can be vested in staff, service users, communities or members of the enterprise. There are a range of possible forms of social enterprise including co-operatives, community interest companies and mutually owned limited companies. The most appropriate form of enterprise and ownership could be addressed during the feasibility and business case process.

69. There are currently no exemptions to a number of important best value and regulatory issues that have constrained the setting up of social enterprises based on council-owned services. This includes for example no exemption from immediate competition for contracts with other providers through EU procurement, or from the transfer of TUPE and pension commitments. The impact of EU 'State Aid' rules will also need to be investigated.
70. LATCs are Council owned and in some circumstances have some exemptions from EU procurement regulation that can be further assessed as part of a business case process. They will have no exemption from TUPE and pension commitments.
71. Transfer into an LATC would result in a number of further options that can be clarified by a business case. The LATC would provide a period in which a transferred service could strive for financial sustainability and competitiveness, within a contracting umbrella that a business case might confirm could sustain a direct business relationship with the Council for a number of years. This gives the owner of the LATC, the council, a number of future options.
- 1) The services provided by the LATC could be bought back under Council management.
  - 2) The LATC can become a long term asset owned wholly by the Council.
  - 3) The LATC can become a fully independent social enterprise.
72. An investigation of the business case and the development of options for transfer of services into independent social enterprise or an LATC would be required as part of a more extensive business development project for all of the council's directly provided services. As with outsourcing, different approaches to the future may be required by different services as a result for example of assessments of the future financial sustainability of a service. Appendix 2 indicates the issues that would need to be considered.

73.

#### RECOMMENDATION

74. Option 3. Develop and consult on a business case for outsourcing directly provided social care services.
- OR
- Option 4. Develop and consult on a business case for transferring directly provided social care services into new trading enterprises such as independent not-for profit enterprises or a Local Authority Trading Company.
- OR
- both Option 3 and Option 4.

#### APPENDICES ATTACHED

75. [Appendix 1](#): Proposed Business Development Model for Directly Provided Services.
76. [Appendix 2](#): Stage 1. Conception and Feasibility: Critical elements in the development of options for directly provided services.

## BACKGROUND PAPERS

77. 2011/12 - 2013/14 Budget Strategy and Council Tax Setting (Paper D) considered at Cabinet on 8 February 2011.
78. Adult Social Care Consultations - Eligibility Criteria, Charging & Westminster House. Consultation Report presented at Cabinet on 8 February 2011 (including Equalities Impact Assessment)
79. Feedback From The Initial Consultation Around Care For Older People On The Isle Of Wight, Including The Role Of The Adelaide And The Gouldings
80. Report on Care for Older People on the Isle of Wight including the role of The Adelaide and The Gouldings – Engagement Report (including the updated Equalities Impact Assessment).
81. Isle of Wight Council Cabinet, Minutes, 7 December 2010.

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